

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BOOTH OIL SITE ADMINISTRATIVE
GROUP,

Plaintiff,

v.

DECISION AND ORDER
98-CV-696A

GEORGE T. BOOTH, JR., et al.,

Defendants.

On February 21, 2008, defendant Ahsen Yelkin filed objections to a subpoena *duces tecum* issued to him on behalf of plaintiff Booth Oil Site Administrative Group ("BOSAG"). Similarly, on February 22, 2008, defendant Joseph Chalhoub filed objections to a subpoena *duces tecum* issued to him on behalf of BOSAG. On March 5, 2008, BOSAG filed a response to the objections.

After reviewing the submissions of the parties, the Court denies the defendants' objections. "While a Rule 45 subpoena is typically used to obtain the production of documents and/or testimony from a non-party to an action (whereas Rules 26-37 provide simpler means for obtaining the same from a party), nothing in the Federal Rules of Civil Procedure explicitly precludes the use of Rule 45 subpoenas against parties." First City, Texas-Houston, N.A. v. Rafidain Bank, 197 F.R.D. 250, 254 n.5 (S.D.N.Y. 2000) (citing Badman v. Stark, 139 F.R.D. 601, 603 (M.D. Pa. 1991)) ("Rule 34 applies only to parties to the lawsuit, while a subpoena under Rule 45 may be

served upon both party and non-party witnesses.”)). Accordingly, the Court hereby orders defendants Yelkin and Chalhoub to comply with the subpoenas *duces tecum*.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: March 7, 2008